

June 08 2012 3:54 PM

KEVIN STOCK
COUNTY CLERK
NO: 12-2-09868-4

BEFORE THE SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR PIERCE COUNTY

TILlicum ACTION COMMITTEE,

Petitioner,

v.

CITY OF LAKEWOOD, a Washington
Municipal Corporation, and STATE OF
WASHINGTON, MILITARY
DEPARTMENT

Respondents

NO.

LAND USE PETITION

A. Identity of Petitioner

1. Petitioner is Tillicum Action Committee, c/o Gendler & Mann, LLP
(below).

2. Petitioner is represented by David S. Mann, Gendler & Mann, LLP, 1424
Fourth Ave., Suite 715, Seattle, WA 98101, 206.621.8868.

B. Identity of Decision Maker and Decision

3. The local decision making body is the City of Lakewood, 6000 Main Street,
SW., Lakewood, WA 98499-5027.

1 4. The decisions challenged are: (1) This City's Decision on Application for a
2 Right-of-Way ("ROW") Permit issued October 10, 2011; (2) The City Hearing Examiner's
3 Decision on Appeal by Tillicum Action Committee issued March 1, 2012; (3) The City's
4 Remanded ROW Permit issued April 6, 2012; and (4) The City Hearing Examiner's
5 Decision on the April 20, 2012 Appeal by Tillicum Action Committee issued May 22,
6 2012.
7

8 Copies of the City Hearing Examiner Decisions are attached.

9 **C. Identity of Parties to be Made a Party under RCW 36.70C.040(2)(b)**

10 5. The applicant for the ROW is the State of Washington Military Department,
11 Bldg 1, Camp Murray, Tacoma, WA 98327-5000.
12

13 **D. Facts Demonstrating Standing of Petitioner**

14 6. The Tillicum Action Committee is composed of individuals residing within
15 the Tillicum neighborhood of the City of Lakewood. The "TAC" has been active in
16 reviewing and commenting on the proposal by Camp Murray to relocate its main gate to
17 the intersection of Portland Avenue SW and Boundary Street SW. The TAC includes
18 members that reside along North Thorne Way, Portland Avenue and within the Eagle Point
19 neighborhood. These individuals will be significantly prejudiced by the City's decision
20 approving the ROW and allowing the diversion of up to a 60% increase in traffic along
21 North Thorne Lane and Portland Avenue – both of which are currently quiet residential
22 streets. Members of TAC will also be significantly prejudiced by the City's decision
23 approving the ROW and allowing an almost ten-fold increase in traffic at the intersection
24 of Boundary Street and Portland Avenue – the sole ingress and egress route for the Eagle
25 Point subdivision.
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1 7. As residents of the City of Lakewood, the City was required to consider the
2 interests of members of TAC in making its ROW decision.

3 8. Judgment in favor of TAC reversing the ROW decision will substantially
4 eliminate or redress the prejudice suffered by members of TAC.

5 9. TAC, on behalf of its members, has exhausted its administrative remedies to
6 the extent required by law and has standing pursuant to RCW 36.70C.060(2).
7

8 **E. Statement of Errors**

9 10. The City's ROW decision is erroneous for failing to address the safety of
10 approving the new Camp Murray gate at an intersection that provides the sole ingress and
11 egress to the Eagle Point Neighborhood.

12 11. The City's ROW decision is erroneous for failing to address the safety for
13 citizens living adjacent to and using residential streets Portland Avenue and North Thorne.
14 Lane.
15

16 12. The City's ROW decision is erroneous in failing to comply with the City of
17 Lakewood's Comprehensive Plan.

18 13. The City Hearing Examiner erred in accepting evidence after the close of
19 the initial public hearing but then conducting a closed record hearing on the remand
20 appeal.
21

22 **F. Statement of Facts Supporting Appeal**

23 14. In June, 2010, the Washington Military Department ("WMD") prepared a
24 Draft Environmental Assessment ("EA") for the Camp Murray New Entry Control
25 Point/Main Gate. After extensive comment, a final EA was issued in August, 2011.
26
27
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1 15. On August 25, 2011, the WMD's agent AHBL submitted a Right of Way
2 Permit Application to the City of Lakewood for a permit to construct a new main gate at
3 Boundary Street SW and Portland Ave., SW. On that same date the Environmental
4 Programs Manager for the WMD recommended that the City of Lakewood formally adopt
5 the August, 2011 EA and Finding of No Significant Impact.

6 16. On September 14, 2011, the City of Lakewood issued a Notice of
7 Application for the Right of Way Permit. The Notice of Application requested comments
8 by September 26, 2011. The City received a significant number of comments including
9 comments from members of TAC.

10 17. On September 26, 2011, the City of Lakewood received a petition signed by
11 more than 50 City residents asking the City to hold a hearing prior to adopting the federal
12 EA/FONSI for the Camp Murray Gate Relocation. The City did not do so.

13 18. Instead, the City forwarded the petition to the WMD and declared that the
14 WMD should be the agency conducting the hearing. The WMD declined to hold a public
15 hearing.

16 19. On October 10, 2011, the City issued the ROW permit to WMD.

17 20. The ROW fails to address the safety of locating the new entry gate at the
18 intersection of Boundary Street SW and Portland Avenue SW. This intersection is the sole
19 ingress and egress point for the Eagle Point Neighborhood. In the event of an incident or
20 threat at Camp Murray, the Camp will, based on past events, close its gate causing traffic
21 to back up well beyond the intersection, thereby isolating the neighborhood from ingress or
22 egress either by residents or emergency vehicles.

1 21. The ROW fails to address the impacts to public safety from locating the
2 main gate to a military base in a civilian residential neighborhood.

3 22. The ROW fails to address the impacts to public safety from the significant
4 increase in traffic along North Thorne Way and Portland Avenue.

5 23. The ROW fails to adequately address impacts to public safety, and in
6 particular school children, using North Thorne Lane and Portland Avenue, from the
7 significant increase in traffic.
8

9 24. All project permit applicants in the City of Lakewood are required to
10 comply with the City's Comprehensive Plan.

11 25. Portland Avenue, North Thorne Lane, and Berkeley Street (north of Union
12 Avenue, SW) are designated "collector arterials" under the City of Lakewood
13 Comprehensive Plan. Collector arterials are defined as streets that connect residential
14 neighborhoods with smaller community centers and facilities as well as access the minor
15 and principal arterial system.
16

17 26. Camp Murray is not a "smaller community center or facility."

18 27. The City of Lakewood Comprehensive Plan Goal T-3 calls for maximizing
19 road connections without negatively impacting residential areas. The City's ROW
20 decision significantly negatively impacts residential areas.
21

22 28. The City of Lakewood Comprehensive Plan Goal T-5 calls for the City to
23 manage traffic to minimize its impacts on neighborhood, mobility and enterprise. The
24 City's ROW decision fails to minimize the impacts of Camp Murray traffic on an existing
25 residential neighborhood.
26

27 **G. Relief Requested**

1 29. That this Court order the City of Lakewood to certify and return to this
2 Court a certified copy of the record of the City's Right-of-Way permit decision;

3 30. Upon return of the record, this Court review the decisions of the City and
4 City Hearing Examiner;


5 31. That the Court reverse the City's decision and remand for re-consideration.

6 32. That the Court grant other such relief, including temporary, preliminary or
7 permanent injunctive relief, as the Court may deem appropriate.
8

9 Dated this 8th day of June, 2012.

10 Respectfully submitted,

11 GENDLER & MANN, LLP

12
13 By: 
14 David S. Mann
15 WSBA No. 21608
16 Attorneys for Petitioner
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**HEARING EXAMINER
FOR THE
CITY OF LAKEWOOD**

March 1, 2012

RECEIVED

MAR 07 2012

**DECISION ON
APPEAL BY TILlicum ACTION COMMITTEE**

GENDLER & MANN, LLP

SUBJECT: WASHINGTON STATE MILITARY DEPARTMENT, CAMP MURRAY NEW ENTRY CONTROL POINT/MAINGATE; CITY OF LAKEWOOD RIGHT OF WAY PERMIT No. 11192

PUBLIC HEARING

A public hearing was conducted on this appeal on February 3, 2012 at the Lakewood City Hall. The appellant was represented by David S. Mann of Gendler & Mann, LLP; the Washington State Military Department was represented by Brian Faller, Assistant Attorney General; and the City of Lakewood was represented by Heidi Ann Wachter, City Attorney and Matt Kaser, Associate City Attorney.

Testimony was given by Robin Banko, Jeff Lucas, Jan Merriman, and Ross Tilghman, on behalf of the appellant; Don Wickstrom, Public Works Director and David Bugher, Assistant City Manager and Community Development Director, on behalf of the City of Lakewood; and Jon Pascal and Mark McElroy, on behalf of the Washington State Military Department.

Exhibits offered and admitted are listed at the conclusion of this decision.

FINDINGS OF FACTS

Having reviewed the record, the examiner makes and enters the following findings:

1. The Washington State Military Department ("WMD") operates a 240 acre state owned property known as "Camp Murray" in Pierce County, WA. Camp Murray is bounded on the west¹ by American Lake; on the east by Interstate 5; on the south by Joint Base Lewis-McChord ("JBLM"); and on the north by the City of Lakewood ("City"). The primary entry control point ("ECP") for Camp Murray, sometimes called the "Main Gate", is on Camp Murray's north border, directly south of and adjacent to the intersection of Union Avenue² and Berkeley Street. That intersection is located in the City.

2. WMD has decided to relocate the ECP approximately 1,300 feet further west on Camp Murray's north border, to a location directly south of and adjacent to the intersection of Portland Avenue and Boundary Street, also within the City. This decision was made by WMD after completing a site development plan in 2010, which included construction of a new ECP at

¹ Written statements of directions in this area can be difficult to conceptualize, as Interstate 5 ("I-5") runs approximately northeast to southwest adjacent to all properties and the street grid in the vicinity. For ease and clarity, this decision will assume (as does the City's Right of Way Permit decision), that I-5 runs north to south in the area. All directional statements will follow that convention unless specifically stated otherwise.

² All streets and avenues in the vicinity have the suffix "Southwest", unless otherwise stated.

Portland Avenue and Boundary Street as a "preferred course of action." A draft Environmental Assessment ("EA") for construction of this new ECP was issued and circulated by WMD in 2010. In 2011, a final EA and a Finding of No Significant Impact were issued by WMD.

3. Camp Murray is located within unincorporated Pierce County. Construction of the ECP requires permits and approvals from the county. These have been applied for and granted, and construction within Pierce County is underway.

4. On August 25, 2011, WMD applied to the City for a Right of way permit, to connect the new ECP to the City public road system and to construct road improvements within the City. These improvements are intended to mitigate the probable impacts upon those City streets that will carry additional traffic traveling to and from Camp Murray. The City determined the application to be complete on September 9, 2011, allowed a period for public comments through September 26, and issued Right of Way Permit No. 11192 ("City decision") on October 10, 2011.

5. A Notice of Appeal of the City decision was filed by Tillicum Action Committee on October 20, 2011. The appeal now under consideration asserts that the City decision:

- Fails to address the safety of approving the new ECP at an intersection that provides the sole ingress and egress to the Eagle Point neighborhood;
- Fails to address the safety of approving the new ECP in a residential neighborhood; and
- Fails to adequately address traffic safety on North Thorne Lane and Portland Avenue.³

6. The City decision allows WMD, "...to connect the new gate access (at Portland Avenue and Boundary Street) to existing street right of way (and)...to construct all of the improvements listed herein as required by and approved by the City of Lakewood." The City decision grants the permit subject to 17 conditions. The conditions that are relevant to this appeal are listed below in abridged form:

V. During construction, appropriate mitigations as required and approved by the City, shall cover truck movements to and from the Tillicum neighborhood, construction hours, dust control and other construction specifications.

VI. WMD shall construct specified improvements to Portland Avenue, between Boundary Street and Berkeley Street, including, but not limited to, the roundabout, the right turn lane (north bound to east bound) at Berkeley Street, and the asphalt overlay of Portland Avenue, prior to the new ECP being open or used. Further, the improvements listed in B. 1 through B.6 below shall be physically under construction before the the new ECP can be used for service. Unless specifically stated otherwise, all improvements in this condition shall be completed within 360 days from issuance of the City decision.

³ The scope of the appeal has been narrowed from the appeal initially filed by Tillicum Action Committee, as a result of pre-hearing agreements and orders made and issued in this proceeding.

A. WMD shall widen to eight feet with asphalt concrete pavement the northwesterly shoulder along North Thorne Lane from approximately Union Avenue to Spruce Street for pedestrian use.

B. Within 180 days of issuance of the City decision, WMD shall widen, reconstruct and/or modify Portland Avenue from Boundary Street to Spruce Street to include:

1. A right turn lane (northbound to eastbound) at the intersection of Berkeley Street;
2. Up to four raised platform crosswalks including related pavement, drainage, curb returns, sidewalks and other appurtenances as determined by the Public Works Director;
3. New school zone signage in the vicinity of Maple Street;
4. Parking pull-out areas including pavement, drainage, curb, gutter, sidewalk and other appurtenances determined by the Public Works Director;
5. New asphalt concrete pavement overlay at the locations and to the extent determined by the Public Works Director. The layout of the right-turn lane, raised platform crosswalks and the parking pull-outs shall generally conform to the preliminary drawings on file with the City's Public Works Department.
6. New landscaped roundabout, as required by and approved by the City's Public Works Department. The layout of the roundabout shall generally conform to that depicted on the preliminary drawings on file with the City's Public Works Department.

C. WMD shall modify and activate the existing traffic signal at Union Avenue and Berkeley Street, subject to City review and approval. The said traffic signal shall be modified to reflect the closing of the existing Camp Murray gate to all traffic except heavy trucks, oversize vehicles and equipment.

1. All traffic leaving Camp Murray from the Union Avenue (existing) gate will be limited to right turns only onto Berkeley Street.
2. Any traffic signal modifications shall include signal control for dual left-turn movements southbound from Union Avenue to eastbound on Berkeley Street, with an interconnection for synchronization purposes with both the I-5 interchange ramp signals and railroad track crossing advance warning system.
3. WMD shall widen the existing eastbound lanes on Berkeley Street from Union Avenue to the westerly I-5 on and off ramps to accommodate two 12-foot wide travel lanes.

4. WMD shall re-stripe the intersection and its approaches to accommodate the above modifications.

(Note: 3 and 4, above, need not be completed prior to WMD's use of the new ECP; however, they shall be completed prior to June 30, 2013, unless approved otherwise by the City.)

5. Subject to City review and approval, WMD shall make all necessary traffic signal modifications; and all associated costs shall be the sole responsibility of WMD.

D. Prior to opening and using the new ECP for daily operational purposes, WMD shall install road signage on Union Avenue, from and at North Thorne Lane to Berkeley Street, and on Berkeley Street, from Union Avenue to Portland Avenue, and on Portland Avenue, from Berkeley Street to Boundary Street, identifying those streets as the designated travel route to and from the new ECP.

VII. The City decision is subject to the practicability of WMD's assertion that a 40 vehicle stacking capacity between City right of way and the vehicle check point within Camp Murray is sufficient to preclude vehicles entering the site at peak times from stacking onto City right of way. Should the 40 vehicle stacking capacity prove to be inadequate, WMD, at its sole expense, shall provide additional on-site stacking capacity as the City deems appropriate.

VIII. In consultation with JBLM and the City, WMD shall continue its efforts to implement additional access restrictions at the southerly access to Camp Murray, adjacent to JBLM North. To that end, a written report shall be submitted to the City Public Works Director. This report will provide information on the numbers of persons using the back gate, ongoing efforts of JBLM and the applicant to restrict its use, and/or to close the gate altogether. Upon review of the report, the City's Public Works Director, at his/her discretion may require additional update reports for the purpose of assessing changing conditions or may amend the terms and conditions of this right of way permit (the City decision).

IX. Camp Murray is subject to the state Commute Trip Reduction (CTR) law, and is required to submit to Pierce County an update to its CTR program by December 14, 2011. In addition, the City is requiring WMD, by December 14, 2012, to develop and implement an enhanced CTR program which considers not merely employees, but the totality of its operations occurring at Camp Murray, including indirect employees such as reservists or National Guard members who may be reporting to the site. The enhancement program shall contain goals and policies intended to reduce drive-alone rates among all those working at Camp Murray, thus minimizing traffic upon City rights-of-way. It shall conform to the format and content prescribed by Pierce County and RCW 70.94.531, with stated exceptions, and shall be submitted to the City for prior review and approval.

X. All heavy trucks and oversize vehicles shall continue to use the existing gate at Union Avenue. Subject to review and approval by the City Public Works Director, WMD shall develop an operations plan on how inbound/outbound vehicles will use this gate.

XI. WMD shall relocate the Combined Support Maintenance Shop from Camp Murray

to JBLM.

XII. Prior to the relocated ECP becoming operational, WMD shall provide details of the anticipated relocation of National Guard personnel over a multi-year period, and shall incorporate those numbers into the enhanced CTR program required by condition IX.

XIII. WMD shall conduct a follow-up traffic report 12 months after the new gate is operational to evaluate needs or issues related to changes in travel behavior caused by the project. The report, once finalized, will be distributed to the City, local agencies and interested parties. Based on the outcome of this report, the City may modify, and/or Revoke this permit.

XIV. WMD shall pay to the City \$100,000, to be set aside for the specific purpose of making adjustments in traffic calming methods in subsequent years as may be deemed necessary. The City may use these funds only for design and installation of traffic calming measures in the Tillicum community. Any funds not expended within five years of the opening of the new Main Gate shall be returned to WMD upon request.

XV. In the event of emergencies, WMD, at its sole discretion, is allowed to use both gates in an effort to relieve neighborhood congestion.

7. The City Decision states, "The Community Development Director and Public Works Director have the authority to approve, deny, modify and/or condition the permit application." Apart from the safety issues identified in Finding No. 5, the appropriate criteria to be used by the Directors in making the decision on this Right-of-Way permit application is not an issue raised by the notice of appeal. Whether or not there is any benefit to WMD, or to persons traveling to and from Camp Murray, as a result of this City decision has not been raised as an issue on appeal.

8. The testimony of Assistant City Manager and Community Development Director David Bugher was that, although he is not normally as involved in a Right of Way Permit decision, he felt compelled to involve himself in this one. He became involved in 2009, upon contact by WMD. Because of the environmental considerations associated with this project and the level of public interest, he determined that this permit application would be treated as a "Process II" permit. That determination was not challenged by any party.

9. For a "Process I" permit application, "The Community Development Director *shall* issue a permit if he finds that all applicable approvals or licenses by other agencies have been granted and the proposed development conforms or can be conditioned or modified to conform to all of the applicable requirements of this title and other city ordinances and regulations..." LMC 18A.02.540. A "Process II" permit application does not contain the foregoing provision. Instead, the code provides, "The Community Development *Director shall determine whether or not the proposed development meets the required development standards....*" LMC 18A.02.545.C.

10. The Director's decision to issue or not issue a "Process II" permit may be appealed to the Hearing Examiner. The administrative decision shall be given substantial weight by the hearing examiner, and the standard of review to be applied shall be whether the administrative decision was clearly erroneous based on a review of all evidence, or was arbitrary or capricious.

11. The hearing record provides no specific evidence that relocation of the Camp Murray ECP from Union Avenue and Berkeley Street to Portland Avenue and Boundary Street would improve traffic safety on any streets in the affected area.

12. A primary concern that the City addressed in acting on WMD's application for this Right-of-Way permit was the effect substantial additional traffic on Portland Avenue and on Thorne Lane would have on the safety of residents of the Tillicum area. The conditions of the permit (see Finding No. 6, above) demonstrate the City's attempt to limit the use of Portland Avenue and Thorne Lane by traffic traveling to and from the new ECP. Examples of this intent include condition No. VI. D, which requires signs designating Union Avenue and Berkeley Street as the "designated travel route to and from" the new ECP; and condition No. VI. B. 1, which requires construction of a right turn lane from northbound Portland Avenue onto eastbound Berkeley Street. This right turn lane would encourage traffic leaving Camp Murray to travel east on Berkeley Street to the Berkeley Street/Union Avenue interchange, from which traffic can either access I-5 Interchange 122, or travel north on Union Avenue to I-5 Interchange 123. To the extent drivers accept that encouragement, the impact of additional traffic on Portland Avenue, north of Berkeley Street, and on Thorne Lane would be reduced.

13. The conditions of the permit also are designed to slow the traffic, both existing traffic and new traffic, which will use Portland Avenue and Thorne Lane to travel to and from Interstate 5. For example, designation of Portland Avenue as a "school zone" (20 miles per hour), construction of up to four speed humps/crosswalks and other traffic calming features on Portland Avenue, are all intended to slow traffic. Reducing vehicle speed is generally accepted as a method of improving traffic safety.

14. In summary, the City conditions are designed to reduce usage of the Portland Avenue/Thorne Lane route by traffic travelling between I-5 (Exit 123) and the new ECP. For those persons who nevertheless do use that new route (whether they are traveling to and from Camp Murray or are persons who reside in or have other business in the Tillicum area), the City conditions will slow their trip in order to make it less hazardous.

15. On the one block of Portland Avenue south of Berkeley Street, extending to the proposed new gate at Boundary Street, average daily vehicle trips are projected to increase from 600 to 5,000⁴. This section of Portland Avenue is slightly more than 400 feet long. It is a local access street that provides the sole ingress and egress to the Eagle Point residential neighborhood. The function of local access streets is to provide direct access to individual residential or commercial properties. The City decision requires improvements to this section of Portland Avenue be completed prior to the new ECP being open and used for daily operation. In addition to street widening and construction of the right turn only lane, leading onto eastbound Berkeley Street, the City decision requires construction of a roundabout at the new entrance to Camp Murray, and provides for assurance that all vehicles waiting to enter Camp Murray will be able to "stack" on the site (not back-up into the roundabout while waiting to enter). WMD's traffic study shows that vehicles entering the roundabout from all directions will move at level of service "A", and 95% of vehicles will encounter less than three seconds of delay⁵. This analysis was not challenged.

16. Union Avenue parallels Interstate 5 from Berkeley Street (Exit 122) to Thorne Lane (Exit 123). The extension of Union Avenue south of Berkeley Street, designated "Militia Drive", leads to the present Camp Murray main gate. Union Avenue is classified by the City Comprehensive Plan as a "Minor Arterial." A "Minor Arterial" is defined as an intra-community roadway connecting community centers with principal arterials. The design traffic volume for minor

⁴ Exhibit 200, Figures 1 and 4.

⁵ Exhibit 200, Exhibit J Boundary/Portland Operations Analysis

arterials is 5,000 to 20,000 vehicles per day. See City of Lakewood Comprehensive Plan, July 2000, Ch. 6, p.3⁶. Union Avenue, although not currently built to City standards for a Minor Arterial, does travel through and serves the commercial area between Berkeley Street and Thorne Lane. The City conditions that endeavor to direct traffic entering and leaving Camp Murray onto Union Avenue, as a preferred route to and from I - 5 Exit 123, are clearly appropriate.

17. Portland Avenue and Thorne Lane are "Collector Arterials". The purpose of a "Collector Arterial" is to "Connect residential neighborhoods with smaller community centers and facilities as well as (provide) access to the minor and principal arterial system". The design traffic volume for collector arterials is 2,000 to 8,000 vehicles per day. See City of Lakewood Comprehensive Plan, July 2000, Ch. 6, p.3 and Figure 6.1, Arterial Street Classifications, Ch. 6, p. 4. Portland Avenue and Thorne Lane are streets through a residential area; they provide access between the Tillicum neighborhood and the minor and principal arterial system, as well as direct access to adjacent residences. Portland Avenue and Thorne Lane do not currently serve commercial facilities or any other large traffic generator. The City's effort to discourage traffic to and from Camp Murray from using these streets is also clearly appropriate.

18. The general principles that underlie the transportation chapter of the Lakewood Comprehensive Plan include:

"Create a transportation system that contributes to quality of life and civic identity in Lakewood." City of Lakewood Comprehensive Plan, July 2000, Ch. 6, p.2

The challenge, as recognized by the Comprehensive Plan, is "...to strike a balance between accommodating increased traffic demand and maintaining community character." Ch. 6, p.2

Goals of the Comprehensive Plan that appear relevant to this appeal are:

"T-3: Maximize road connections without negatively impacting residential areas."

"T-5: Manage traffic to minimize its impact on neighborhoods, mobility, and enterprise."

19. The City's Land Development Code, Title 18A, is intended to implement the adopted planning goals and policies represented in the Comprehensive Plan. "Actions initiated under this title shall be consistent with the comprehensive plan as adopted or hereafter amended. Where a provision of this code is found to be in conflict with the comprehensive plan, the comprehensive plan shall apply..." LMC 18A.02.120

20. In November, 2011, the U.S. Defense Department selected for funding (in the amount of \$5.7 million) a project application submitted by the City for modification of Freedom Bridge and related transportation infrastructure improvements to alleviate congestion and improve safety along the Berkeley Street corridor between Madigan gate (east of I-5) and the Union Avenue/Berkeley Street intersection. This project is scheduled for construction in 2013. The traffic flow improvements anticipated from this project are summarized in Exhibit 200, Exhibit D, Camp Murray Gate Improvements-Portland Avenue Gate Transportation Benefits/Impacts Summary. Once this project is completed, traffic to and from the new ECP is expected to move

⁶ Appendix 2, Table 2, Roadway Design Criteria, attached to Exhibit 200, contains different ADT (Average Daily Trip) ranges and somewhat different functions than contained in the Comprehensive Plan.

most efficiently by way of Berkeley Avenue to and from I-5 Exit 122, without using Portland Avenue, north of Berkeley Street, and Thorne Lane. The additional traffic on Portland Avenue south of Berkeley Street, however, would continue.

CONCLUSIONS

Based upon the foregoing facts, the examiner makes and enters the following conclusions:

1. The hearing examiner has jurisdiction to hear and decide this appeal.
2. The scope of the hearing examiner's authority is limited to the issues on appeal, as set forth in the Notice of Appeal. Those issues are stated in Finding No. 5.
3. The hearing examiner is required to give substantial weight to the decision under review, and may reverse or modify that decision only if it was clearly erroneous based on a review of all evidence, or was arbitrary or capricious.
4. The validity of the reasons for WMD's application for Right of Way Permit No. 11192 are not within the scope of the issues on appeal. Balancing the benefits likely to accrue from the issuance of this permit against adverse impacts that may result from the permit's implementation is also outside the scope of the issues on appeal. For the same reason, the examiner cannot consider the effect of the Berkeley Street improvement project, described in Finding No. 20, on the need for the ECP relocation project or the City decision.
5. The conditions of Right of Way Permit No. 11192 demonstrate substantial consideration was given to the need to provide for traffic safety in conjunction with authorizing this permit. Although substantial increases are likely to occur in the number of passenger vehicles that will use Thorne Lane, Portland Avenue, and Berkeley Street west of Union Avenue, the permit's conditions are intended to reduce those traffic increases on Portland Avenue north of Berkeley Street and on Thorne Lane. Permit conditions are also designed to slow the speed of traffic on Portland Avenue north of Berkeley Street, and to reasonably accommodate the additional traffic on Portland Avenue between Berkeley Street and Boundary Street. Subject to Conclusion No. 6, the issuance of Right-of-Way Permit No. 111922, with the conditions contained therein, was not clearly erroneous, arbitrary or capricious.
6. The examiner has considered the possible inconsistency of Right of Way Permit No. 11192 with the principles and goals of the City Comprehensive Plan that are listed in Finding No. 18, and with the classification of Thorne Lane and Portland Avenue as "collector arterials" (as compared to the classification of Union Avenue as a "minor Arterial"), discussed in Findings 16 and 17. Applicable provisions of the Comprehensive Plan are relevant to City action on a right-of-way permit pursuant to LMC 18A.02.120 and should be considered.

The provisions of the Comprehensive Plan described in Findings 16-18 are relevant to the traffic safety concerns that arise from adding significant additional traffic through residential streets of the Tillicum neighborhood. Comprehensive Plan road classifications and Goals T-3 and T-5 do relate, *inter alia*, to safety issues. If they were overlooked in the review of the permit (there is no evidence in the hearing record that they were considered and applied), that is not a harmless oversight. In light of the specific requirement of LMC 18A.02.120 and the community-wide issues addressed by this permit, the City should insure that all applicable provisions of the Comprehensive Plan are given appropriate consideration in the City's action. To not do so would be clearly erroneous. Because the hearing record does not demonstrate that these

Comprehensive Plan provisions were considered, this application should be remanded to the Public Works Department and the Department of Community Development. The Responsible Directors should reconsider their action on Right of Way Permit No. 11192 in light of the classifications of all the arterial streets in issue, and of Comprehensive Plan Goals T-3 and T-5. Based upon that reconsideration, the Directors should modify, affirm or deny Right of Way Permit No. 11192.

DECISION

Right of Way Permit No. 11192 is remanded to the Public Works Department and the Community Development Department for further consideration in light of the classifications of all the arterial streets in issue (Union Avenue, Thorne Lane and Portland Avenue), and of Comprehensive Plan Goals T-3 and T-5.

Based upon that further consideration, the Directors of the Public Works and Community Development Departments should modify, affirm or deny Right of Way Permit No. 11192.

Ordered this 1st day of March, 2012

James N. O'Connor
City of Lakewood Hearing Examiner

EXHIBITS:

The examiner entered into the record the following exhibits:

City of Lakewood Exhibits

- A. Hearing Examiner Staff Report
- B. Right of Way Permit No. ROW11192
- Exhibits 1-113⁷
- 114 Illustrative map of the area dated July 25, 2011

Washington Military Department Exhibits

- 200 Transpo Group traffic study letter dated January 27, 2012, responding to exhibit No. 308
- 201 Project Memo from AHBL to City of Lakewood re Vehicle Stacking
- 202 Biography of Jon Pascal, Transpo Group
- 203 Drawing of proposed Roundabout and new Entry Control Point
- 204 Letter dated November 1, 2011 from Department of Defense, Office of Economic Adjustment, to City of Lakewood, Re: Madigan Army Medical Center Access Improvement

⁷ Copies of exhibits 1-113, and a table of contents identifying each of the documents, are available on a DVD. The original documents are available in the office of the Lakewood City Attorney.

Appellant Exhibits

- 301 Aerial photo of Thorne Lane
- 302 Aerial photo of Portland Avenue/Boundary Street intersection
- 303 (a), (b) and (c) Photos of Thorne Lane
- 304 (a), (b), (c) and (d) Photos of Thorne Lane/Union Avenue intersection
- 305 Photo showing vehicle and boat trailer parking on Boundary Street
- 306 Photo showing vehicle parking on Portland Avenue
- 307 Ross Tilghman, Tilghman Group, Resume
- 308 January 11, 2012 Tilghman Group Traffic Comments
- 309 Not Admitted (Draft of Tillicum Neighborhood Plan dated June 2010)
- 310 September 16, 2010 letter from David Bugher to Thomas Skjervold (same as exhibit 2)
- 311 not offered
- 312 not offered
- 313 October 27, 2011 letter from Eagle Point Homeowners' Association to David Bugher
- 314 Department of Defense Distribution Statement, "Security Engineering: Entry Control Facilities/Access Control Points"

May 22, 2012

**HEARING EXAMINER
FOR THE
CITY OF LAKEWOOD**

**DECISION ON
April 20, 2012 APPEAL BY TILLICUM ACTION COMMITTEE**

SUBJECT: WASHINGTON STATE MILITARY DEPARTMENT, CAMP MURRAY NEW ENTRY CONTROL POINT/MAINGATE; CITY OF LAKEWOOD REMANDED RIGHT OF WAY PERMIT No. 11192

PUBLIC HEARING

A closed record public hearing was conducted on this appeal on May 21, 2012 at the Lakewood City Hall. The appellant was represented by David S. Mann of Gendler & Mann, LLP; the Washington State Military Department (WMD) was represented by Brian Faller, Assistant Attorney General; and the City of Lakewood (City) was represented by Heidi Ann Wachter, City Attorney and Matt Kaser, Associate City Attorney.

No evidence was offered or entered at the May 21, 2012 hearing. The record considered by the Hearing Examiner was:

- The record of the February 3, 2012 hearing on the October 20, 2011 appeal of ROW Permit 11192 by the Tillicum Action Committee (TAC);
- The Hearing Examiner's March 1, 2012 Decision On Appeal By Tillicum Action Committee (TAC);
- The April 6, 2012 City of Lakewood, Washington Remanded Right-of-Way Permit (ROW 11192); and
- The supplemental information identified on page 8 of Remanded Right-of-Way Permit (ROW 11192) and attached thereto.

All of the parties presented oral argument on the April 20, 2012 Appeal by TAC.

FINDINGS OF FACTS

Having reviewed the record, the examiner makes and enters the following findings:

1. Except as specifically modified herein, the Findings set forth in the March 1, 2012 Hearing Examiner Decision on the Appeal by Tillicum Action Committee are incorporated herein as if fully set forth.
2. On March 1, 2012, ROW Permit 11192 was remanded by the hearing examiner to the City Public Works Department and the Community Development Department for further

consideration in light of the classifications of all the arterial streets in issue (Union Avenue, Thorne Lane and Portland Avenue), and of Comprehensive Plan Goals T-3 and T-5. Based upon such further consideration, the City was requested to modify, affirm or deny Right of Way Permit No. 11192.

3. On April 6, 2012, the City issued Remanded Right-of-Way Permit (ROW 11192) "on the same conditions outlined in its October 10, 2011 Right of Way Permit." (City of Lakewood, Washington Remanded Right-of-Way Permit [ROW 11192] {Remanded Permit}, p. 1). The Remanded Permit concludes with the following "Decision":

"After carefully reviewing the matter and considering specific comprehensive plan policies in context of the proposal, the prior decision, and applicable legal parameters, the Public Works Director and the Community Development Director hereby affirm the prior decision made on October 10, 2011 with regard to Right-of-Way Permit 11192, including all conditions of approval as if fully set forth herein."

4. On April 20, 2012, TAC appealed the Remanded Permit. By Order dated May 17, 2012, the hearing examiner ordered that the only issue to be considered at the hearing on this appeal will be whether, after giving consideration to the classifications of all the arterial streets in issue (Union Avenue, Thorne Lane and Portland Avenue), and to Comprehensive Plan Goals T-3 and T-5, it was clearly erroneous or was arbitrary or capricious for the City of Lakewood to approve ROW Permit 11192.
5. The Remanded Permit, at pp. 3-7, gave substantial consideration to the road classifications of the arterial streets in issue (Union Avenue, Thorne Lane and Portland Avenue), and to Comprehensive Plan Goals T-3 and T-5.
6. The Remanded Permit also discussed the distinction between policies contained in the comprehensive plan and development regulations, stating, "Case law is clear that it is the regulations, and not comprehensive plan policies, which directly control permitting decisions:..." Remanded Permit, p. 2. The discussion of this topic in the Remanded Permit does not address the impact, if any, of the provision of the Lakewood Land Use Development Code (LMC 18A), that provides:

"This title is intended to implement the adopted planning goals and policies of the City of Lakewood represented in its comprehensive plan and other planning documents. Actions initiated under this title shall be consistent with the comprehensive plan as adopted or hereafter amended. Where a provision of this code is found to be in conflict with the comprehensive plan, the comprehensive plan shall apply. A provision of this title that is in addition to another requirement of this title is not in conflict, but shall be considered to be supplementary to one another." LMC 18A.02.120

7. The Remanded Permit also discussed "essential public facilities", as defined in RCW 36.70A.200, although the issue of whether the Camp Murray Main Gate/Entry Control Point is, or is not, an "essential public facility" was not an issue addressed in the October 20, 2011 appeal that led to the remand.

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HEARING EXAMINER
FOR THE
CITY OF LAKEWOOD

**TILlicum ACTION COMMITTEE (TAC) APRIL 20, 2012 APPEAL OF RIGHT OF WAY
PERMIT (ROW 11192), CAMP MURRAY NEW ENTRY CONTROL POINT**

**ORDER DENYING MOTION TO RECONSIDER ORDER DENYING MOTION TO DISMISS
APPEAL**

On May 17, 2012, the hearing examiner issued an order denying Washington State Military Department's (WMD's) Motion to Dismiss this appeal. On May 18, 2012, WMD served and filed a Motion for Reconsideration of the order denying the Motion to Dismiss. The May 18 Motion to Reconsider was argued on May 21, 2012.

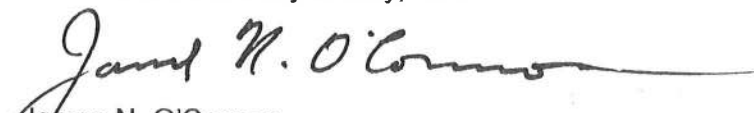
The May 17, 2012 Order on Motion to Dismiss implies that the City of Lakewood would have authority to site an Essential Public Facility (EPF) that is not located within City boundaries. That implication is not intended by the examiner. City Comprehensive Plan Goals CF-8 and CF-9 are written to address EPFs that are located within city boundaries. Pierce County would have the sole authority to address the siting of an EPF within the unincorporated area of the county.

The underlying point of the denial of the Motion to Dismiss is that the hearing record is silent on the issue whether Pierce County sited the new Camp Murray Main Gate/Entry Control Point as an EPF. One would assume that if it had, that fact would have appeared in the extensive record, and it would have been argued on the appeal to be a determinative factor.

To present the assertion that the new Entry Control Point is an EPF at this stage of the appeal process, without any supporting record that the new Entry Control Point constituted an EPF, appears to the hearing examiner to be fundamentally unfair. It would deprive the appellant, as well as other members of the affected community, access to whatever processes exist to challenge or influence the selection of the new Entry Control Point as an EPF.

The WMD Motion for Reconsideration Re Motion to Dismiss is denied.

Ordered this 23rd day of May, 2012


James N. O'Connor,
City of Lakewood Hearing Examiner